Wang Po v Fong Soong Metal Works Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — COMPANIES (WINDING UP) NO WA-28NCC-292–03 OF 2019
KHADIJAH IDRIS J
12 SEPTEMBER 2019

Companies and Corporation — Winding up — Petitioner applied for winding up petition — Respondent applied for stay of winding up petition — Whether special circumstances existed to grant stay of winding up petition — Whether court had jurisdiction to grant stay of proceedings — Companies Act 2016 s 465(1)(f) & (1)(h)

This was a winding up petition filed by the petitioner under s 465(1)(f) and (1)(h) of the Companies Act ('the Act') on 28 March 2019. On 10 April 2019, the first respondent filed an application to stay the winding up petition ('the petition') on a certificate of urgency. The return date of the application for stay was fixed on 15 April 2019. On the return date, learned counsel for the petitioner applied for time to enable them to file an affidavit in reply to the application for stay as the said application was only served on them on the same day. The court then gave directions for parties to exhaust affidavit. Pending the hearing and disposal of the application for stay, the first respondent applied for an ad interim stay in terms of prayers in the application for stay. The petitioner's learned counsel objected to the said oral application. It was the petitioner's contentions that: (a) the petitioner was and continued to be excluded from participating effectively in the management of the first respondent; (b) the second and third respondents had persistently taken steps to prejudice the rights of the petitioner in the first respondent; and (c) the second, third, fourth and fifth respondents have acted in the affairs of the first respondent in their own interest rather than in the interest of the members as a whole or acted in any other manner which appeared to be unfair or unjust to members. The petitioner contended that: (i) there was an irretrievable breakdown in the personal relationship between the petitioner and the second, third, fourth and fifth respondents; and (ii) it was just and equitable that the first respondent was wound up.

Held, allowing first respondent's application for ad interim stay:

(1) While what constituted special circumstances was essentially a question of fact, it was not for the court to examine the facts and determine whether there were special circumstances as the first respondent's

application for stay could not be possibly heard and disposed of on the return date simply on the ground that the petitioner must be given right to file its affidavit (see paras 18).

(2) It would be expedient and prudent for the issue of multiplicity of proceedings was adjudged first as the adjudication on such issue might cause the winding up petition was dismissed. It was equitable and just for the court to make the ad interim order pending the hearing and disposal of the application for stay. It was consistent with the power vested under s 25 of the Court of Judicature Act and the additional powers under para 11 of the Schedule to the same Act where the High Court had the jurisdiction to grant stay of proceedings in any manner (see para 20).

[Bahasa Malaysia summary

Ini adalah petisyen penggulungan yang difailkan oleh pempetisyen di bawah s 465(1)(f) dan (1)(h) Akta Syarikat ('Akta tersebut') pada 28 Mac 2019. Pada 10 April 2019, responden pertama memfailkan permohonan untuk menggantung petisyen penggulungan ('petisyen tersebut') melalui sijil kesegeraan. Tarikh kehadiran bagi permohonan penggantungan ditetapkan pada 15 April 2019. Pada tarikh tersebut, peguamcara yang bijasana bagi pempetisyen memohon untuk tempoh masa untuk membolehkan mereka memfailkan afidavit balasan bagi permohonan penggantungan kerana permohonan tersebut hanya diserahkan kepada mereka pada hari yang sama. Mahkamah kemudiannya memberikan arahan kepada pihak-pihak agar melupuskan afidavit. Sementara menunggu pendengaran dan pelupusan permohonan penggantungan, responden pertama memohon penggantungan ad interim berdasarkan kepada prayer-prayer dalam permohonan penggantungan tersebut. Peguamcara yang bijaksana bagi pempetisyen telah membantah permohonan lisan tersebut. Ianya adalah hujahan pempetisyen bahawa: (a) pempetisyen telah dan terus dikecualikan daripada mengambil bahagian secara efektif dalam pengurusan responden pertama; (b) responden kedua dan ketiga secara terus-menerus mengambil langkah untuk memprejudiskan hak pempetisyen dalam responden pertama; dan (c) responden kedua, ketiga, keempat dan kelima telah bertindak dalam urusan responden pertama demi kepentingan mereka sendiri dan bukannya untuk kepentingan ahli secara keseluruhan atau bertindak dengan cara lain yang kelihatan tidak adil atau saksama kepada ahli. Pempetisyen berpendapat bahawa: (i) terdapat keretakan yang tidak dapat diselesaikan dalam hubungan peribadi antara pempetisyen dengan responden kedua, ketiga, keempat dan kelima; dan (ii) adalah adil dan saksama responden pertama digulungkan.

Diputuskan, yang membenarkan permohonan responden pertama untuk penggantungan ad interim:

(1) Walaupun apa yang membawa kepada keadaan khusus pada dasarnya adalah soalan fakta, ianya bukan bagi mahkamah untuk memeriksa fakta

dan menentukan apakah ada keadaan khusus bagi permohonan responden pertama untuk penggantungan berkemungkinan tidak dapat didengar dan dilupuskan pada tarikh kehadiran hanya dengan alasan bahawa pempetisyen haruslah diberi hak untuk memfailkan afidavitnya (lihat perenggan 18).

(2) Ianya adalah wajar dan bijaksana untuk isu prosiding berganda diadili terlebih dahulu kerana keputusan atas isu tersebut dapat menyebabkan petisyen penggulungan ditolak. Adalah adil dan saksama bagi mahkamah untuk membenarkan perintah ad interim sementara menunggu pendengaran dan pelupusan permohonan penggantungan. Ini adalah bersesuaian dengan kuasa yang diberikan di bawah s 25 Akta Mahkamah Kehakiman dan kuasa tambahan yang diberikan di bawah perenggan 11 Jadual tersebut di bawah Akta yang sama di mana Mahkamah Tinggi mempunyai bidang kuasa untuk membenarkan penggantungan prosiding dengan cara apa pun (lihat perenggan 20).]

Cases referred to

Azman & Tay Associates Sdn Bhd v Sentul Raya Sdn Bhd [2002] 4 MLJ 390; [2002] 4 CLJ 391, HC (refd)
Cheah Cheng Lan v Heng Yea Lee [2001] 1 MLJ 433, CA (refd)
People Realty Sdn Bhd v Red Rock Construction Sdn Bhd [2008] 1 MLJ 453; [2008] 1 CLJ 632, CA (refd)
RIH Services (M) Sdn Bhd v Tanjung Tuan Hotel Sdn Bhd [2002] 3 MLJ 1; [2002] 3 CLJ 83, CA (refd)

Legislation referred to

Court of Judicature Act 1964 s 25, 25(2), Schedule, paras 6, 11
Companies (Winding-Up) Rules 1972 r 30(1)
Companies Act 2016 ss 346, 351, 465(1)(f), (1)(h), 469(1)(c), (3)(f), 470(1)
Rules of Court 2012 O 93 r 4

Amandev Singh (Lee Hishammuddin Allen & Gledhill) for the petitioner.
Christina Chia Li Eng (Joshinae Wong Peism Ting and Low Jia Mun with her) (Christina Chia Law Chambers) for the respondents.

Khadijah Idris J:

INTRODUCTION

[1] This is a winding up petition filed by the petitioner under s 465(1)(f) and (1)(h) of the Companies Act 2016 ('the CA 2016') on 28 March 2019.

[2] On 10 April 2019 the first respondent filed an application to stay the winding up petition dated 28 March 2019 ('winding up petition') on a certificate of urgency. The first respondent was directed by this court to serve the application for stay ('application for stay') on the petitioner and return date of the said application was fixed on 15 April 2019.

[3] On the return date, learned counsel for the petitioner applied for time to enable them to file an affidavit in reply to the application for stay as the said application was only served on them on the same day. The court then gave directions for parties to exhaust affidavit.

[4] Pending the hearing and disposal of the application for stay, the first respondent applied orally for an ad interim stay in terms of the prayers in the application for stay. The petitioner's learned counsel objected to the said oral application. After hearing oral submissions from both parties, this court allowed the first respondent application for an ad interim stay in terms of the application for stay pending disposal of the hearing of the application for stay ('ad interim order'). Dissatisfied with the said decision, the first respondent appealed.

FACTUAL BACKGROUND

[5] The petition is facts as gathered from the petitioner's affidavit verifying as follows:

(a) the petitioner, Wan Po ('petitioner') is an individual who is also a director and shareholder of a company known as Fong Soong Metal Works Sdn Bhd which is the first respondent;

(b) Fong Soong Metal Works Sdn Bhd ('the first respondent') has four other directors:

  (i) Wang Hun ('the second respondent') who is the petitioner's brother and also a shareholder of the first respondent;

  (ii) Wang Chong ('the third respondent') who is also the petitioner's brother and also a shareholder of the first respondent;

  (iii) Wang Hon Weng ('the fourth respondent') who is the second respondent's son and a director as well as shareholder of the first respondent; and

  (iv) Wang Hon Wah ('the fifth respondent') who is the third respondent's son and also a director as well as shareholder of the first respondent;

(c) the first respondent was incorporated on 23 August 1995. Its authorised share capital is RM500,000 divided into 500,000 shares of RM1 each.

The first respondent was established to carry on the business of, inter alia, manufacturers, distributors and agents of building materials, hardwares and factory wares;

(d) the total issued capital of the first respondent was 250,000 ordinary shares of RM1 each and the paid-up capital was RM250,000. Initially the shares of the first respondent were at all material times held in approximately equal proportion by the petitioner, the second and third respondents ('the Wang brothers'). As at 31 December 2017 the shares in the first respondent were held by the Wang brothers as follows:

	Shareholder	No of Shares	Percentage
(a)	The petitioner	84,000	33.6%
(b)	The second respondent	83,000	28.2%
(c)	The third respondent	83,000	28.2%

(e) other than being a property investment company, the first respondent has two principal types of metal works business:

(i) construction related, such as construction metal works, custom made steel products and mild steel railings ('construction metal works'), which was principally managed by the petitioner; and

(ii) machinery related, such as conveyor systems, steel tanks and stillage trolleys ('machinery metal works'), which was principally managed by the second and third respondents;

(f) the first respondent was formed and continued on the basis of the petitioner's personal relationship with his brothers, the second and third respondents. There was a common underlying understanding between the Wang brothers that the petitioner would always be entitled to participate in the management and financial management and financial aspect of the first respondent;

(g) in March 2018 the second and third respondents transferred, notwithstanding the petitioner's objection, part of their shares to their sons the fourth and fifth respondent as a result of which the shareholders and shareholding structure of the first respondent is as follows:

	Shareholder	No of Shares	Percentage
(i)	The petitioner	84,000	33.6%
(ii)	The second respondent	70,500	28.2%
(iii)	The third respondent	70,500	28.2%
(iv)	The fourth respondent	12,500	5%
(v)	The fifth respondent	12,500	5%

(h) over the years the children of the Wang brothers became involved in the machinery metal works. Notwithstanding their children's participation, the Wang brothers continued to manage the first respondent's business;

(i) the relationship between the Wang brothers began to strain after the fourth and fifth respondents could not get along with the petitioner's son, Simpson. The disagreements was due to, inter alia, the potential revision of the Wang brothers' children's salary in the first respondent and the accusation by the fourth and fifth respondents that Simpson failed to performed his duties;

(j) due to the familial discord, it was verbally agreed that the business of the first respondent be split in the following manner:

(i) the petitioner will continue the construction metal works under a different entity, Fong Soong Metal Construction Sdn Bhd ('FSMC'). FSMC was incorporated on 26 May 2017. The shareholders and directors of FSMC are the petitioner and his two sons including Simpson; and

(ii) the second and third respondents will continue the machinery metal works under Fong Soong Engineering Sdn Bhd ('FSE'), which has been incorporated since 28 August 2008. The shareholders and directors of FSE are the second and third respondents as well as their sons, the fourth and fifth respondents who only became shareholders and directors of FSE on 19 May 2017; and

(k) however the arrangements did not resolve the disagreements and distrust between the Wang brothers and their children. There were allegations made against each other by the Wang brothers and their children including the following:

(i) financial irregularities by the second and third respondents;

(ii) diversion of the first respondent's business by the petitioner to his daughter;

(iii) attempts were made by the second and third respondents to remove the petitioner as a director by requisitioning a members' meeting;

(iv) the petitioner and Simpson were denied full access to the office of the first respondent, workers of FSMC could not use all of the first respondent's equipment and machineries; and

(v) despite the management agreement between the first respondent and FSMC, in December 2017 the petitioner was informed by the second respondent that the first respondent's administration and finance staff will cease to provide services to FSMC and that FSMC need to engage its own administration and finance staff.

[6] The above feud between the parties led to multiple suits filed by the parties against each other:

(a) the petitioner filed an oppressive suit in Kuala Lumpur High Court, Originating Summons No WA-24NCC-4–1 of 2018 ('Suit 4') against the first, second and third respondents. An interlocutory injunction was obtained by the petitioner to restrain the second and third respondents from proceeding with the requisition pending hearing and final decision of Suit 4; and

(b) the first respondent, brought an action in Kuala Lumpur High Court, Suit No WA-22NCC-54–2 of 2018 against the petitioner, FSMC and the petitioner's three children ('Suit 54') for breach of fiduciary duty by the petitioner. In Suit 54, the first respondent also brought an action against FSMC for unpaid management fees.

[7] The relationship between the Wang brothers worsened as the petitioner and the second and third respondent could not see eye to eye, among others, in relation to the following issues:

(a) the petitioner objected to the resolution passed by the second and third respondent to sell the first respondent's assets;

(b) at the AGM of the first respondent on 26 June 2018, the petitioner objected to the laying of the first respondent's audited financial statements for the year ended 31 December 2017 and reports of the auditors and directors as he was not consulted on the preparation of the said documents. The petitioner also objected to the re-appointment of the first respondent's auditor;

(c) the petitioner questioned the manner and justification for the sale of the first respondent's assets: (i) shop lot at Bukit Serdang the development of a vacant land in Semenyih; and (iii) the sale of Palm Garden Apartment; and

(d) in all the said matters, the petitioner alleged that he was kept in the dark about those matters because some of the matters were not part of the agenda of various board of directors' meeting and that the relevant documents in relation to the said matters were not made available to him (despite his request).

[8] It is the petitioner's contentions that:

(a) he was and continues to be excluded from participating effectively in the management of the first respondent;

(b) the second and third respondents have persistently taken steps to prejudice the rights of the petitioner in the first respondent; and

(c) the second and third respondents and their nominee directors, the fourth and fifth respondents, have acted in the affairs of the first respondent in their own interest rather than in the interest of the members as a whole or acted in any other manner which appears to be unfair or unjust to members.

[9] Based on the aforesaid it is the petitioner's case that there is an irretrievable breakdown in the personal relationship between the second, third, fourth and fifth respondents and him. As such it is just and equitable that the first respondent be wound up under ss 465(1)(f) and/or (1)(h) of the CA 2016 and that Ong Hock An of BDO Consulting Sdn Bhd be appointed as a private liquidator of the first respondent.

APPLICATION FOR STAY (ENCL 9)

[10] The application for stay is made under ss 469(1)(c) and/or (3)(f) and/or 470(1) of the CA 2016 and/or O 93 r 4 of the Rules of Court 2012. In the said application the first respondent prayed for the following orders:

(a) that the petitioner's winding up petition ('winding up petition') dated 28 March 2019 and all further proceedings in this winding up petition herein be stayed pending hearing and final disposal of the first respondent's notice of motion dated 10 April 2019 filed herein to strike out the winding up petition;

(b) that the petitioner be restrained either by himself and/or his agents and/or his servants and/or anyone:

(i) from advertising, *gazetting*, notifying, publicising, and/or in any manner disseminating and/or revealing in any way whatsoever this winding up petition and information with respect to this winding up petition to any other party; and

(ii) from taking any further steps to effect service of process of this winding up petition on the second, third, fourth and fifth respondent;

(c) that the filing of the respondents' affidavit in opposition to the winding up petition pursuant to r 30(1) of the Companies (Winding-Up) Rules 1972 be stayed pending the full and final determination of the first respondent's notice of motion to strike out the winding up petition.

[11] The grounds for the application for stay as stated in the said application may be summarised as follows:

(a) the first respondent's application to strike out the winding up petition ('application to strike out') constitutes special circumstances which justify a stay;

(b) status quo ought to be maintained pending determination of the first respondent's application to strike out;

(c) the first respondent is an ongoing concern, thus it would suffer irreparable harm and damage which cannot be compensated by damages should the first respondent succeed in its application to strike out if the petitioner is not restrained from, inter alia, advertising the winding up petition; and

(d) Suit 4 was filed by the petitioner under ss 346, 351, 465(1)(f) and (1)(h) of the CA 2016 where one of the prayer sought is the winding up of the first respondent. Suit 4 is pending hearing in court. Thus this winding up petition filed under the same s 465(1)(f) and (1)(h) of the CA 2016 amounts to multiplicity of proceedings and is a blatant abuse of court process.

APPLICATION FOR AD INTERIM STAY

The first respondent contentions

[12] Learned counsel for the first respondent's oral application for an ad interim stay is essentially premised on the same grounds stated in its application for stay. On the return date of the application for stay this court was informed that a case management date was fixed for the application to strike out and hearing of the winding up petition was fixed on 25 June 2019.

[13] On the law, it was submitted on behalf of the first respondent that under s 25(2) of the Court of Judicature Act 1964 ('the Court of Judicature Act') read with para 11 of the Schedule of the same, this court has the power to stay proceedings in cases where there is multiplicity of proceedings.

The petitioner's contentions

[14] Learned counsel cited the case *Azman & Tay Associates Sdn Bhd v Sentul Raya Sdn Bhd* [2002] 4 MLJ 390; [2002] 4 CLJ 391 and *People Realty Sdn Bhd v Red Rock Construction Sdn Bhd* [2008] 1 MLJ 453; [2008] 1 CLJ 632. Premised on the two cases it was argued by the petitioner that this court has no jurisdiction to grant an ad interim injunction.

FINDINGS OF THE COURT

[15] Section 25 of the Court of Judicature Act provides for the powers of the High Court and sub-s 25(2) of the said Act provides for additional powers which is listed in the Schedule to the same. Of relevance is para 11 of the said Schedule which states as follows:

> 11 Res judicata
>
> Power to dismiss or stay proceedings where the matter in question is res judicata between the parties, or where by reason of multiplicity of proceedings in any court or courts the proceedings ought not to be continued.

[16] It is clear the above provision has clothed the High Court with the power to dismiss or stay proceedings on the ground of multiplicity of proceedings. However whether the proceedings ought to be stayed or dismissed on ground of multiplicity of proceedings would certainly depend on the facts of the case and the relevant law. In so far as stay is concerned it is trite law that for the court to grant a stay of proceedings, the applicant must show there is special circumstances.

[17] The first respondent contends this winding up petition filed by the petitioner under s 465(1)(f) and (1)(h) of the CA 2016 (where one of the prayer sought is the winding up of the first respondent) amounts to multiple of proceedings as the petitioner had earlier filed Suit 4 where the same prayer was sought, that is, the first respondent be wound up. Thus it is argued by the first respondent that its application to strike out the winding up petition on ground of multiplicity of proceedings constitutes special circumstances. Accordingly the first respondent argued this winding up proceedings ought to be stayed pending the hearing and disposal of its application to strike out.

[18] While what constitutes special circumstances is essentially a question of fact, it is not for this court at this juncture to examine the facts and determine whether there are special circumstances as the first respondent's application for stay could not be possibly heard and disposed of on the return date simply on the ground that the petitioner must be given the right to file its affidavit to reply to the first respondent's affidavit supporting its application for stay as the said application was only served on the petitioner on the morning of the return date. Thereafter followed by the first respondent's reply to the petitioner's affidavit and submissions from both parties for this court to determine the merits of the application for stay.

[19] If the ad interim order is not granted and the parties proceeded to exhaust affidavits in respect of the first respondent's application for stay, such application and the application to strike out would be redundant as the

petitioner would take steps to proceed with the winding up proceedings including taking steps to advertise the winding up petition. Such steps would be detrimental to the first respondent as it may result in significant commercial embarrassment and economic prejudice on the first respondent which is a going concern.

[20] As such it would be expedient and prudent for the issue of multiplicity of proceedings to be adjudged first as the adjudication on such issue may caused the winding up petition be dismissed. It is the considered opinion of this court that it is equitable and just for this court to make the ad interim order pending the hearing and disposal of the application for stay. The ad interim order is consistent with the power vested in the High Court under s 25 of the Court of Judicature Act and the additional powers under para 11 of the Schedule to the same where the High Court has the jurisdiction to grant stay of proceedings in any manner (see *RIH Services (M) Sdn Bhd v Tanjung Tuan Hotel Sdn Bhd* [2002] 3 MLJ 1; [2002] 3 CLJ 83 discussed below).

[21] In granting the ad interim order this court has not overlooked the cases cited on behalf of the petitioner (*Azman & Tay Associates* and *People Realty*) to support its objection to the first respondent's oral application for an ad interim stay. It is pertinent to note in the said cases the court had dealt with the merits of the application for an interim injunction and dismissed the application to restrain the petitioner from advertising or publishing the winding up petition. While such cases relate to the issue of interim injunction sought to restrain the advertisement of winding up petition (like in the instant case) such cases are not, at this juncture, relevant in so far as ad interim stay is concerned. Moreover, in both *Azman & Tay Associates* and *People Realty* the winding up petition was premised on the inability of the respondent company to pay its debt to the petitioner who had obtained judgment (the execution of which had not been stayed) against the respondent company. In this instant case the winding up petition is premised on just and equitable ground which is highly factual and contentious unlike the facts in *Azman & Tay Associates* and *People Realty* which is purely monetary in nature.

[22] The issue in respect of the power of the court to grant ad interim stay (or ad interim injunction) was not an issue at all in the cases cited by the petitioner as there was no such application made in the said cases, unlike in the instant case.

[23] A case which discussed the power of court to grant ad interim relief is the Court of Appeal case *RIH Services (M) Sdn Bhd v Tanjung Tuan Hotel Sdn Bhd*. In that case, the High Court granted to the appellant an ex parte interim injunction against the respondent and fixed a date for the application to be heard inter parte. When the matter came up for inter parte hearing, the

appellant sought an adjournment because he had only been served with an affidavit by the respondent that very same morning and suggested another date for the inter parte hearing. The appellant also prayed that in the interim period, the ex parte injunction that was granted be extended. However the High Court set aside the ex parte interim injunction and refused to extend the ex parte interim injunction on the ground that the ex parte interim injunction had automatically lapsed on the date the matter was fixed for inter parte hearing. In considering the issue whether an ex parte interim injunction can be extended beyond 21 days, the Court of Appeal followed its decision in *Cheah Cheng Lan v Heng Yea Lee* [2001] 1 MLJ 433 and held that an ex parte interim injunction cannot be extended beyond 21 days. The Court of Appeal however recognised the fact that an ex parte application may not, for some good reasons be heard inter parte before the expiry of the 21 days and the ex parte injunction is expiring (as the fact in the case of *RIH Services*). Under such a situation the Court of Appeal said:

> So, faced with the situation that the learned judge did, ie he could not hear the application inter partes before the expiry of 21 days and the ex parte injunction was expiring, what could he do?
>
> Bear in mind that the application was still before him, alive and pending. He clearly had the jurisdiction to consider whether or not to grant an ad interim injunction pending the hearing inter partes of the application. From my own experience, quite often parties would agree to such an order or the defendant would give an undertaking to maintain the status quo pending the hearing of the application inter partes. But even if they do not agree, the court has the jurisdiction to make such an order.
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> Such a practice has been adopted in England. In *Beese & Ors (managers of Kimpton Church of England Primary School) & Ors v Woodhouse & Ors* [1970] 1 All ER 769 the plaintiff having filed a writ and the statement of claim, took out a summons for an interim injunction. However, pending the hearing of the application inter partes, the judge granted an injunction, ex parte. The Court of Appeal held that the court below had the jurisdiction to do so. The headnote summarizes the judgment thus:
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> > Where an application for an injunction cannot be heard by the court through no fault of the plaintiff or defendant, and the judge comes to the conclusion on a prima facie view that irreparable damage may be done to the plaintiff by not preventing the continuance of the alleged nuisance or whatever other wrongdoing it may be by the defendant, he has jurisdiction to grant an ex parte injunction (see pp 771g, 772g, and 773j).
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> In this country, Low Hop Bing J has also granted an ad interim injunction pending the hearing of an application for an interim injunction which was to be heard inter partes in *Jakob Renner (an infant suing through his father and next friend, Gilbert Renner) & Ors v Scott King, Chairman of the Board of Directors of the International School of Kuala Lumpur & Ors* [2000] 5 MLJ 254. The learned judge relied on a decision of the court in India in *Jagjit Singh Khanna v Dr Rakhul Pas Mullick & Anor* AIR 1988 Cal 9 and said at p 257:
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> Applying the principle enunciated in the above case, I am of the view that it is

within the jurisdiction of our superior courts to grant an ad interim injunction pending the disposal of an application for interlocutory injunction, such as encl 2 in the instant case. *This view is in line with the powers of the High Court under s 25 of the Courts of Judicature Act 1964 and the additional powers under para 6 of the Sch to the same Act which include the power to grant an injunction in any manner whatsoever.*

Indeed, as we understand it, it is quite a common practice amongst judges in this country.

That way, the status quo is preserved after the expiry of the ex parte order until the inter parte hearing of the application. (Emphasis added.)

[24] Even though the case of *RIH Services* was not concerned with winding up proceedings, of significance and relevance is the issue on the power of court to grant ad interim injunction discussed by the Court of Appeal. It is the stand of the Court of Appeal in *RIH Services* that the court has the jurisdiction to grant an ad interim injunction in order to preserve the status quo where the hearing and disposal of application for injunction is pending. In fact the Court of Appeal in *RIH Services* accepted that the granting of ad interim injunction pending the disposal of an application for interlocutory injunction is consistent with the powers of the High Court under s 25 of the Court of Judicature Act and the additional powers under para 6 of the Schedule to the same Act which include the power to grant an injunction in any manner whatsoever.

CONCLUSIONS

[25] Based on the aforesaid reasons, this court has allowed the first respondent's oral application for the ad interim stay and accordingly made the ad interim order.

First respondent application for ad interim stay allowed.

Reported by Mohd Kamarul Anwar